



March 25, 1999

Mr. Blake Powell
Powell, Chance & Leon, L.L.P.
808 West Avenue
Austin, Texas 78701-2208

OR99-0837

Dear Mr. Powell:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 123056.

The Sanger Independent School District (the "district"), which you represent, received an open records request for "records received by the SISD Board or Board Members during School Board Meetings held in the last 60 days." You state that some responsive information has been released to the requestor. You seek to withhold other information pursuant to sections 552.101 and 552.107(1) of the Government Code.¹

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Although you characterize some of the documents at issue as "personnel" records that are protected from public disclosure under section 552.101 of the Government Code, you have cited no legal authority for your contention, nor have you identified any specific portion of the documents at issue that you believe to be confidential as a matter of law. After reviewing the documents at issue, this office could not identify any information coming within the protection of section 552.101. The district therefore may not withhold any of the requested information pursuant to this exception.

¹We note that although you also contend that some of the information at issue constitutes "attorney work-product," and that some of the information is protected by section 552.126 of the Government Code, you did not raise these arguments within the ten business days following the district's receipt of the open records request. See Gov't Code § 552.301(a). We therefore deem these arguments as waived. See Open Records Decision No. 515 at 6 (1988).

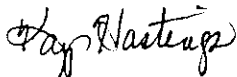
We now address whether the district may withhold the requested documents pursuant to section 552.107(1) of the Government Code, which protects information coming within the attorney-client privilege. *See* Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and client confidences. *Id.*

You contend that the documents you have submitted as Exhibit F-1 and Exhibit F-2 come within the attorney-client privilege. Exhibit F-1 consists of a transmittal letter that accompanied Exhibit F-2, two draft documents prepared by you as attorney for the district for the district's approval. After reviewing these documents, we agree that both Exhibits F-1 and F-2 consist of an attorney's legal advice to his client, and as such may be withheld in their entirety pursuant to section 552.107(1).²

On the other hand, Exhibits G-1 and G-2 do not consist of an attorney's legal advice to a client, but rather are purely factual in nature. Factual reports prepared by an attorney may not be withheld from the public pursuant to section 552.107(1). *See* Open Records Decision No. 462 (1987). We therefore conclude that the district must release Exhibits G-1 and G-2 to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/RWP/ch

Ref.: ID# 123056

Enclosures: Submitted documents

²We note, however, that the final versions of the documents contained in Exhibit F-2 would not come within the attorney-client privilege if they have been seen by the third party to whom they pertain.

cc: Mr. Woodrow Barton
P.O. Box 980
Sanger, Texas 76266
(w/o enclosures)